IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 17TH AUGUST 2007 / 26TH SRAVANA 1929

WP(C).No. 24956 of 2007(U)

AGAINST THE ORDER IN IA 2260/2007 IN OS.322/2003 of MUNSIFF COURT,CHAVAKKAD

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PETITIONER:

ARJUNAN, S/O. VADAKKAN VELAYI,
AGED 39 YEARS, GANASHAMANGALAM DESOM,
VATANAPPILLY AMSOM, CHAVAKKAD TALUK.

BY ADV. SRI.P.RAMACHANDRAN

RESPONDENTS:

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1. **KUNJAKKAN, S/O. VADAKKAN SANKARAN,**
   GANESHAMANGALAM DESOM, VATANAPPILLY AMSOM,
   CHAVAKKAD TALUK.

2. **VALLIKUTTY, D/O. -DO-,**
   RESIDING AT -DO-.

3. **KUNJIPENNU, D/O. -DO-,**
   RESIDING AT -DO-.

4. **VALLIYAMMA, W/O. VADAKKAN VELAYI,**
   RESIDING AT -DO- -DO-.

5. **SULOCHANA, W/O. PADIPATH VELAYUDHAN,**
   KARAKKAD DESOM, GURUVAYOOR DESOM,THRISSUR DISTRICT.

6. **INDIRA, W/O. THOOMATT VELAYUDHAN,**
   KUNDALIYOOR AMSOM, DESOM, CHAVAKKAD TALUK.

7. **MOHINI, W/O. VADAKKAN BHARATHAN,**
   GANESHAMANGALAM DESOM, VATANAPPILLY TALUK, AMSOM,
   CHAVAKKAD TALUK.

8. **CHANDRIKA, W/O. VADAKKAN BABU,**
   RESIDING AT -DO- -DO-.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No. 24956 OF 2007

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Dated this the 17th day of August 2007

JUDGMENT

This writ petition is filed to set aside the order passed by the Munsiff's Court, Chavakkad I.A.No.2260 of 2007 in O.S.No.322 of 2003. It is the case of the plaintiff that the property belonged to one Velayi and his 3 brothers. Velayi died and his legal representatives are the plaintiff, his widow, 4th defendant and children, defendants 5 to 8. The plaintiff has filed the suit for partition or division of 1/24 shares in the plaint schedule property. It is contended by the plaintiff that a kudikidappu certificate has been issued in favour of Velayi's wife, the 4th defendant only on account of the death of Velayi as the senior member and it will not confer her any exclusive right and therefore he wanted to examine the landlord Mohammed Haneef for the purpose of proving the same. His name figured in the witness list and on that day as he was laid up he could not be examined. The court below did not give further opportunity and closed the evidence of the plaintiff. Defendants' evidence is also closed. Mohammed Haneef, being the landlord, whatever may be the nature of evidence, it is

desirable not to shut out the evidence at the trial stage so that the said contention can be averted at an appellate forum.

Therefore in order to enable the parties to have full satisfaction regarding the evidence they want to adduce, I direct the court below to permit the plaintiff to examine Mohammed Haneef. Needless to say that if on account of the same defendants want to examine further witnesses that also may be permitted.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-